

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:
VITAMINS ANTITRUST LITIGATION

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) Misc. No. 99-197 (TFH)
) MDL No. 1285

THIS DOCUMENT RELATES TO:
ALL ACTIONS

FILED

FEB 27 2003

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

**Re: January 24, 2003 Report and Recommendations of the Special Master Respecting
Plaintiffs' Motion to Strike Lyman Johnson's Expert Report**

Pending before the Court is the Report and Recommendations of the Special Master respecting Plaintiffs' Motion to Strike Lyman Johnson's Expert Report. Having received no objections pursuant to Rule 53 of the Federal Rules of Civil Procedure, the Court will adopt the Report and Recommendations of the Special Master as its Opinion in this matter. Thus, it is hereby **ORDERED** that:

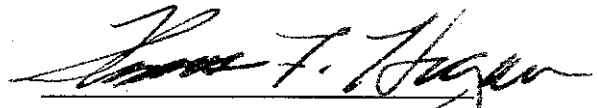
(1) The Court will withhold ruling on the plaintiff's motion to strike insofar as it contends that the "issues addressed in the [expert] Report constitute impermissible legal conclusions and instructions on the law, which usurp the functions of the Court and the trier of fact" (Pl. Mot. to Strike at 1.), and will leave this branch of the motion for resolution by the transferor courts on remand of the cases in which DuPont and ConAgra are defendants;

(2) Plaintiffs' Motion is **DENIED** insofar as it contends that "Professor Johnson's entire Report is irredeemably tainted by his consideration of a number of key documents with respect to which DuPont and ConAgra have asserted attorney-client privilege and/or work product protection and about which plaintiffs have been and continue to be denied discovery" (*Id.*);

(3) Plaintiffs' Motion in the alternative for leave to take further discovery "because DuPont and ConAgra have waived any previously asserted privilege or protection with respect to the documents considered by Professor Johnson and the subject matters to which those documents relate" (Id.) is **DENIED**.

SO ORDERED.

February 26, 2003


Thomas F. Hogan
Chief Judge